Saipan Hotel Corporation, d/b/a Hafadai Beach Hotel *and* Hotel Employees & Restaurant Employees, Local 5, AFL–CIO and Commonwealth Labor Federation. Case 37–CA–4202

December 19, 1995

DECISION AND ORDER

BY MEMBERS BROWNING, COHEN, AND TRUESDALE

Pursuant to a charge filed by Hotel Employees & Restaurant Employees, Local 5, AFL–CIO and Commonwealth Labor Federation, the Union, on August 29, 1995, the General Counsel of the National Labor Relations Board issued a complaint on September 29, 1995, alleging that the Respondent has violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing the Union's request to bargain and to furnish necessary and relevant information following the Union's certification in Case 37–RC–3687. (Official notice is taken of the ''record'' in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer admitting in part and denying in part the allegations in the complaint.

On October 30, 1995, the General Counsel filed a Motion for Summary Judgment and memorandum in support. On November 1, 1995, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. On December 4, 1995, the General Counsel filed a further brief in support of the motion for summary judgment, and on December 6, 1995, the Respondent filed a brief in opposition to the motion.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

In its answer and response the Respondent admits its refusal to bargain and to furnish information, but attacks the validity of the Union's certification on the basis of its arguments in the representation proceeding that the Board lacks jurisdiction over this matter and that the unit is inappropriate because it includes both nonresidents and residents.[1]

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding.[2] We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941).

We also find that there are no issues requiring a hearing with respect to the Union's request for information. The Union requested the following information from the Respondent:

1. Name, age, classification, wage rate, red-circle rate (if any), and seniority dates of each covered employee.
2. Weighted Average Wage Rate.
3. Total compensable hours per month for the past year.
4. Total cost, on a compensable hour basis, of use for each benefit (sick leave, vacation pay, holiday pay, funeral leave, overtime, etc.)
5. Cost per employee per month for the medical, dental, drug, and vision plans and any co-payment required of any employee.
6. Cost per employee per month for any retirement plans.
7. Cost per employee for any other benefits: e.g. housing, meals, etc.

[1] The Respondent has not specifically asserted as a defense in the instant proceeding certain additional objections it filed to conduct allegedly affecting the results of the election in the representation proceeding. In any event, we find that the Respondent is barred from doing so inasmuch as it failed to file a request for Board review of the Regional Director's supplemental decision overruling the additional objections. See *A. Bonfatti & Co.*, 316 NLRB 623 fn. 1 (1995), and cases cited there.

[2] In his March 23, 1995 Decision and Direction of Election, which the Board effectively affirmed by order dated April 28, 1995, the Regional Director applied by analogy the principles and standards set forth in *Res Care, Inc.*, 280 NLRB 670 (1986), and *Long Stretch Youth Home*, 280 NLRB 678 (1986), and found that the Board had jurisdiction over the Respondent's nonresident workers under those principles and standards inasmuch as the Employer retained sufficient control over essential terms and conditions of employment of its nonresident workers to enable it to engage in meaningful bargaining. Although the Board, Member Cohen dissenting, subsequently overruled the *Res Care/Long Stretch* line of cases in its July 18, 1995 decision in *Management Training Corp.*, 317 NLRB 1355 (1995), the Board thereby effectively broadened rather than restricted its jurisdiction. Thus, *Management Training* holds that, in determining whether to assert jurisdiction, ''the Board will only consider whether the employer meets the definition of 'employer' under Section 2(2) of the Act, and whether such employer meets the applicable monetary jurisdictional standards.'' 317 NLRB at 1358. Accordingly, we find that the Board's decision in *Management Training* provides no basis for reconsidering the Regional Director's jurisdictional findings. Further, ''absent special circumstances, the Board has traditionally applied the pronouncement of a new rule of law to the case in which it arose and to all pending cases.'' *Hickman Harbor Service*, 266 NLRB 476, 477 (1983), enfd. in pertinent part 739 F.2d 214 (6th Cir. 1984). We shall, therefore, apply the rule of law expressed in *Management Training* to the present case, and we find that it provides an additional basis for asserting jurisdiction.

Member Cohen adheres to his dissenting position in *Management Training*. Further, he does not reach the retroactivity issue, and would assert jurisdiction on the basis cited by the Regional Director.

Although the Respondent in its answer states that it is without knowledge or information sufficient to form a belief as to whether the foregoing information is necessary and relevant, it is well established that such employee, wage, and benefit information is presumptively relevant for purposes of collective bargaining and must be furnished on request. See, e.g., *Tire America*, 315 NLRB 197 (1994); and *Holiday Inn Coliseum*, 303 NLRB 367 (1991).

Accordingly, we grant the Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a corporation of the Commonwealth of the Northern Mariana Islands (CNMI), with an office and place of business located in Garapan, on the Island of Saipan, CNMI, has been engaged in the operation of a hotel and restaurants. During the calendar year ending December 31, 1994, the Respondent, in conducting its operations, derived gross revenues in excess of $500,000 and purchased and received at its Garapan, Saipan, CNMI facility, goods and materials valued in excess of $5000, which originated from points outside the CNMI.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.[3]

II. ALLEGED UNFAIR LABOR PRACTICES

A. *The Certification*

Following the election held July 14, 1995, the Union was certified on August 25, 1995, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

> All employees of the Employer employed in the CNMI excluding all managers, professional and confidential employees, guards and supervisors as defined in the Act.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

B. *Refusal to Bargain*

About August 28, 1995, the Union requested the Respondent to bargain and to furnish relevant and necessary information, and, since about the same date, the Respondent has refused. We find that this refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By refusing on and after August 28, 1995, to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit and to furnish the Union requested necessary and relevant information, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union, and, if an understanding is reached, to embody the understanding in a signed agreement. We also shall order the Respondent to furnish the Union the information requested.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by the law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817 (1964); and *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965).

ORDER

The National Labor Relations Board orders that the Respondent, Saipan Hotel Corporation, d/b/a Hafadai Beach Hotel, Saipan, Commonwealth of the Northern Mariana Islands, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with Hotel Employees & Restaurant Employees, Local 5, AFL–CIO, and Commonwealth Labor Federation, as the exclusive bargaining representative of the employees in the bargaining unit, and refusing to furnish the Union information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employ-

[3] Although the Respondent in its answer states that it is without knowledge or information sufficient to form a belief as to whether the Union is a 2(5) labor organization, the Respondent stipulated to the Union's 2(5) labor organization status in the underlying representation proceeding. Accordingly, we find that the Respondent is precluded from litigating the issue in this proceeding. See *Biewer Wisconsin Sawmill*, 306 NLRB 732 fn. 1 (1992), and cases cited there.

ment and, if an understanding is reached, embody the understanding in a signed agreement:

> All employees of the Employer employed in the CNMI excluding all managers, professional and confidential employees, guards and supervisors as defined in the Act.

(b) Furnish the Union the information that it requested on August 28, 1995.

(c) Post at its facility in Saipan, Commonwealth of the Northern Mariana Islands, copies of the attached notice marked ''Appendix.''[4] Copies of the notice, on forms provided by the Regional Director for Region 20 after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

[4] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with Hotel Employees & Restaurant Employees, Local 5, AFL–CIO and Commonwealth Labor Federation, as the exclusive representative of the employees in the bargaining unit, and WE WILL NOT refuse to furnish the Union information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

> All employees employed by us in the CNMI excluding all managers, professional and confidential employees, guards and supervisors as defined in the Act.

WE WILL furnish the Union the information that it requested on August 28, 1995.

SAIPAN HOTEL CORPORATION, d/b/a
HAFADAI BEACH HOTEL